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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/451,580	11/30/1999	DANIEL L. POOLE	3339-PA13	9240

757 7590 10/24/2003

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EXAMINER

SMITH, JAMES G

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/451,580

Applicant(s)

POOLE ET AL.

Examiner

James G. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,8-11,13-15,17,18,20-33 and 39-41 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1,2,4-6,8-11,13-15,17,18,20-33 and 39-41 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 27 August 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The Office action of 03 December 2001 is withdrawn, further the allowance of all claims is withdrawn in view of the new search and references. The requirement for restriction in the Office action of 23 March 2001 is withdrawn and an action on the merits of all the claims is found below. Any inconvenience to applicants is regretted.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10, 11, 13-15, 17, 23, 29, 39 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 39 are ambiguous as it is unclear as to what is meant by "one of the jaw portion(s) (being) flexible in an outward direction and biased in an inward direction" as there is only one jaw portion in the first member.

There is also no antecedent basis for "the inner surfaces" in claim 23 and "the ends of said jaw portions" in claim 29.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 2, 4, 18, 20, 21, 24, 25, 30, 31 and 41 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any of Stratman, Sarvie(697) or Bothum as all show two single piece members with handle and jaw portions with a clamp bar on one member extending into an opening in the other member with the opening upper and lower surfaces providing a guiding means, and a brake lever pivotally engaged within a notch formed in the other member.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 6, 8-10, 14, 15, 17, 22, 23, 26-29, 32, 33, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie(697) or Bothum in view of Wolff et. al..

Any of Stratman, Sarvie(697) or Bothum shows the claimed invention except for the use of a plastic material of construction. Wolff et. al. suggests that a pliers type of clamp can be made of a plastic material to allow it to be flexible. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by making any of them of a plastic material to make them more flexible because Wolff et. al. suggests the use of such a material in the manufacture of clamps or pliers.

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8. Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Stratman, Sarvie(697) or Bothum in view of Wolff et. al. as applied to claims 5, 6, 8-10, 14, 15, 17, 22, 23, 26-29, 32, 33, 39 and 40 above, and further in view of any of Hersey, McGuckin of Reiter.

Any of Stratman, Sarvie(697) or Bothum, as modified by Wolff et. al., shows the claimed invention except for the use of a spring biased jaw portion. Any of Hersey, McGuckin of Reiter suggests that a clamp or pliers can have such a spring biased jaw portion to provide the tool with more flexibility. It would therefore be obvious to one skilled in the art at the time the invention was made to modify any of Stratman, Sarvie(697) or Bothum by using a spring to bias a jaw portion because any of Hersey, McGuckin of Reiter suggests the use of such a spring to bias a jaw portion on the same type of tool.

9. Clarke is cited as showing the use of a pivotally attached jaw portion.

Response to Arguments

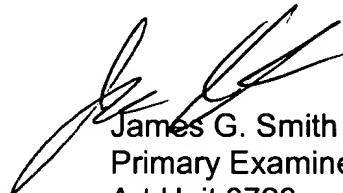
10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



James G. Smith
Primary Examiner
Art Unit 3723

jgs
10/15/03